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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,749	08/20/2003	Sylvan R. Shemitz	SHEM-99 CON	9116
1473	7590	03/01/2004	EXAMINER	
FISH & NEAVE 1251 AVENUE OF THE AMERICAS 50TH FLOOR NEW YORK, NY 10020-1105			WARD, JOHN A	
			ART UNIT	PAPER NUMBER
			2875	

DATE MAILED: 03/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/645,749		SHEMITZ ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	John A. Ward		2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>0803</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 5-8, 10 and 12 of U.S. Patent No. 6,552,118 in view of Barr (US 6,257,735). Regarding claims 1 and 3-12, the chart below discloses how the prior art of Shemitz et al discloses all the limitations of the claimed invention.

Claims of Instant Application	Claims of ('735).	The similarities or differences.
1	1	Claims of instant application are broader in scope.
3	2	Similar in scope.
4	8	Similar in scope.

5	2	Similar in scope.
6	7	Similar in scope.
7	5	Similar in scope.
8	6	Similar in scope.
9	10	Similar in scope.
10	10	Similar in scope.
11	5	Similar in scope.
12	12	Similar in scope.

Regarding claims 1 and 2, Shemitz et al does not disclose a reflector and ballast are connected together inside the housing and adjusted simultaneously together.

Regarding claims 1 and 2, Barr ('735) discloses a fluorescent light reflector having a ballast means electrically connected to each of the banks of reflector (claim 22).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the luminare of Shemitz et al with the light reflector and ballast means of Barr in order to provide a more uniform light distribution from the reflector (column 2, lines 30-36).

Claims 13-19 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3, 4 and 6 of U.S. Patent No. 6,552,118 in view of Barr (US 6,257,735). Regarding claims 13, and 15-19, the

chart below discloses how the prior art of Shemitz et al discloses all the limitations of the claimed invention.

Claims of the instant application	Claims of the ('735)	Similarities or differences
13	1	Claim 13 is broader in scope than the prior art of record.
15	4	Similar in scope.
16	6	Similar in scope.
17	3	Similar in scope.
18	4	Similar in scope.
19	6	Similar in scope.

Regarding claims 13 and 14, Shemitz et al does not disclose a reflector and ballast are connected together inside the housing and adjusted simultaneously together.

Regarding claims 13 and 14, Barr ('735) discloses a fluorescent light reflector having a ballast means electrically connected to each of the banks of reflector (claim 22).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the luminaire of Shemitz et al with the light reflector and ballast means of Barr in order to provide a more uniform light distribution from the reflector (column 2, lines 30-36).

Claim 20 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6 of U.S. Patent No. 6,552,118 in view of Barr (US 6,257,735). Regarding claim 6, the prior art of Shemitz et al substantially discloses all the limitations of the claimed invention.

Regarding claim 20, Shemitz et al does not disclose a reflector and ballast are connected together inside the housing and adjusted simultaneously together.

Regarding claim 20, Barr ('735) discloses a fluorescent light reflector having a ballast means electrically connected to each of the banks of reflector (claim 22).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the luminare of Shemitz et al with the light reflector and ballast means of Barr in order to provide a more uniform light distribution from the reflector (column 2, lines 30-36).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Forrest (US 4,464,707) shows a lighting fixture having a having a reflector mounted in a housing having a light source, reflector and ballast, along with the ballast and light source mounted to the reflector along with a mechanism located outside the housing to rotate the housing.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John A. Ward whose telephone number is 571-272-2386. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on 571-272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JAW  
February 4, 2004



John A. Ward  
Patent Examiner AU 2875